

No. 12-1413 BN

Jamie Adams' nursing license is subject to discipline because she worked as a nurse while under the influence of marijuana.

On August 6, 2012, the State Board of Nursing (“the Board”) filed a complaint seeking to discipline Adams’ license as a practical nurse. Adams was served by certified mail on June 10, 2013 with a copy of the complaint and our notice of complaint/notice of hearing, as well as our order of May 1, 2013 granting a continuance and resetting the hearing date. The Board filed an amended complaint June 14, 2013. The Board sent the motion and the amended complaint to Adams by first class mail. Adams did not file an answer to the complaint or to the amended complaint.

On July 24, 2013, The Board filed a motion to enter a default decision under §§ 536.063(6), 536.067(5), 621.100.2, and 621.045.6.¹ By order dated August 7, 2013, we denied the motion because we lacked authority to enter a default decision on an amended complaint under those statutes. However, we also noted that Adams had never filed an answer, and was required to do so under 1 CSR 15-3.380(1).² We ordered Adams to file an answer to the amended complaint by August 23, 2013. In our order, we stated: “If she does not, under the authority of 1 CSR 15-3.380(7)(C)3 and (D), we will deem that she has defaulted on the issues raised in the amended complaint and dispose of the amended complaint accordingly.”

On September 6, 2013, the Board filed a “motion for summary decision based on the pleadings” (“the motion”). In the motion, the Board asks that we find the facts pled in its complaint to be admitted because Adams has not filed an answer. We construe the Board’s request as a motion under 1 CSR 15-3.425 for the sanction of deeming the allegations in its complaint to be admitted, and under 1 CSR 15-3.426(1)(C) for involuntary dismissal. We deem the allegations in the Board’s complaint to be admitted and make the following undisputed findings of fact.

Findings of Fact

1. Adams is currently licensed by the Board as a practical nurse (“LPN”). Her license was current and active at all relevant times.

2. In June 2011, Adams was working as an LPN at John Knox Village Care Center (“John Knox”) in Lee’s Summit, Missouri.

3. On June 15, 2011, while Adams was at work, her pupils were dilated, her speech was slurred, her gait was unsteady, and she was unable to complete sentences.

¹ Statutory references are to the RSMo Supp. 2012, unless otherwise indicated.

² All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

4. Adams submitted to a drug test. She tested positive for THC, a marijuana metabolite.
5. Adams' employment with John Knox was terminated on June 25, 2011.
6. On August 31, 2011, in a written response to the Board, Adams admitted to smoking marijuana.
7. On September 16, 2011, in an interview with the Board's investigator, Adams admitted that she had smoked marijuana several times a week, and continued to do so after her employment was terminated.
8. At the time of the interview, however, Adams was attending group therapy in a drug rehabilitation program.

Conclusions of Law

We have jurisdiction to decide this complaint under §§ 335.066.2 and 621.045.1. The Board has the burden of proving by a preponderance of the evidence that Adams has committed acts for which the law allows discipline. *See Kerwin v. Mo. Dental Bd.*, 375 S.W.3d 219, 229-230 (Mo. App. W.D. 2012). A preponderance of the evidence is evidence showing, as a whole, that “the fact to be proved [is] more probable than not.” *Id.* at 230 (*quoting State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000)).

The Board alleges that there is cause for discipline under § 335.066:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(12) Violation of any professional trust or confidence;

* * *

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

Controlled Substances – Subdivisions (1) and (14)

Adams tested positive for THC, a metabolite of marijuana, which is a controlled substance under § 195.017.2(4)(w). Section 195.202 makes it unlawful for any person “to possess or have under his control a controlled substance” except as authorized by §§ 195.005 to 195.425. Section 324.041 provides:

For the purpose of determining whether cause for discipline or denial exists under the statutes of any board, commission, or committee within the division of professional registration, any licensee, registrant, permittee, or applicant that tests* positive for a controlled substance, as defined in chapter 195, is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state, or the federal government unless he or she has a valid prescription for the controlled substance. The burden of proof that the controlled substance was not unlawfully possessed in violation of the drug laws or rules and regulations of this state, any other state, or the federal government is upon the licensee, registrant, permittee, or applicant.

This statute establishes a presumption that by testing positive for marijuana, Adams unlawfully possessed that controlled substance. Adams did not rebut the presumption. She is subject to discipline under § 335.066.2(1) and (14).

Subdivision (5) – Professional Standards

The Board alleges there is cause to discipline Adams for misconduct and gross negligence. Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.” *Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988). Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty. *Id.* at 533.

Adams went to work as a nurse under the influence of marijuana. This is intentional wrongdoing, and therefore constitutes misconduct. However, the mental states for misconduct and gross negligence are, ordinarily, mutually exclusive, and the Board has made no argument to the contrary in this case. Therefore, we do not find gross negligence.

Adams is subject to discipline under § 335.066.2(5).

Subdivision (12) – Professional Trust or Confidence

The phrase “professional trust or confidence” is not defined in Chapter 335, nor has the phrase been defined in the case law. Absent a statutory definition, the plain meaning of words used in a statute, as found in the dictionary, is typically relied on. *E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011). The dictionary definition of “professional” is

of, relating to, or characteristic of a profession or calling...[;]...
engaged in one of the learned professions or in an occupation
requiring a high level of training and proficiency...[;]
and]...characterized or conforming to the technical or ethical
standards of a profession or occupation....

WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1811 (1986). “Trust” is

assured reliance on some person or thing [;] a confident
dependence on the character, ability, strength, or truth of someone
or something...[.]

Id. at 2456. “Confidence” is a synonym for “trust.” *Id.* at 475 and 2456. Trust “implies an assured attitude toward another which may rest on blended evidence of experience and more subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]” *Id.* at 2456. Confidence “may indicate a feeling of sureness about another that is based on experience and evidence without strong effect of the subjective[.]” *Id.* Therefore, we define professional trust or confidence to mean reliance on the special knowledge and skills that professional licensure evidences. It may exist not only between the professional and her clients, but also between the professional and her employer and colleagues. *See Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo App. E.D., 1989).

Adams worked at her job as an LPN while impaired by her ingestion of an illegal controlled substance. This betrayed the trust of her patients and colleagues who trusted her to be alert and unimpaired in performing her nursing duties. There is cause to discipline her under § 335.066.2(12).

Summary

There is cause to discipline Adams’s license under § 335.066.2(1), (5), (12), and (14).

SO ORDERED on September 11, 2013.

/s/ Karen A. Winn
KAREN A. WINN
Commissioner